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Tort Law - New Trial Damages - Pain and Suffering

Scott P. Bittner

Joyce A. Hatfield-Wise

Recent Decisions

TORT LAW—NEW TRIAL—DAMAGES—PAIN AND SUFFERING—The Pennsylvania Supreme Court held that a jury's failure to award damages for pain and suffering in a personal injury action where the evidence concerning the plaintiff's injuries is uncontested and the injuries are of the type that common sense dictates involve pain and suffering is shocking to a court's conscience and therefore a new trial is appropriate.

Neison v. Hines, 653 A.2d 634 (Pa. 1995).

Louise Brand Neison ("Neison") filed a personal injury action in the Court of Common Pleas of Washington County, Pennsylvania, against Laura B. Hines ("Hines") for damages resulting from a motor vehicle accident that occurred on March 24, 1989.[1] Hines' pickup truck collided with the rear end of Neison's vehicle as Neison was stopped, waiting to make a right hand turn into a market.[2] The collision forced Neison's head backward, shattering the rear window of her two seat sports car.[3] Following the accident, Neison was treated at the emergency room of a hospital for a bruise on her head.[4] Approximately two days after the accident, Neison returned to the hospital, complaining of pain in her neck and shoulder area.[5]

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1. Neison v. Hines, 653 A.2d 634, 636 (Pa. 1995).

2. *Neison*, 653 A.2d at 636. Neison was stopped, with her car's turn signal flashing, while waiting to allow another vehicle into the intersection, when she was struck by Hines' truck. *Id.*

3. *Id.* Testimony at trial showed that the force of the crash completely destroyed the rear portion of Neison's vehicle, and Neison's eyeglasses were discovered lying on the trunk of her vehicle. *Id.* at 637.

4. *Id.*

5. *Id.* Upon visiting the hospital a second time, the attending physician assured Neison that this type of pain was not uncommon considering the nature of

After one week of continuing neck and shoulder pain, Neison visited the medical offices of Dr. John K. S. Lee ("Dr. Lee").[6] Dr. Lee diagnosed Neison's condition as a cervical sprain.[7] In addition to prescribing pain relievers and implementing a home exercise program designed to strengthen the injured area, Dr. Lee also imposed several lifting restrictions.[8] A few months later, Neison began visiting the offices of Dr. Andrew Lucas ("Dr. Lucas"), a chiropractor, who also determined that Neison was suffering from a cervical strain.[9] During her treatments with Dr. Lee and Dr. Lucas, Neison continued to be employed as a physical education and health teacher, although she was assigned supervisory duties.[10]

Subsequently, Neison initiated a civil action against Hines in the Court of Common Pleas of Washington County.[11] During the trial, Hines admitted being solely liable for causing the accident of March 24, 1989.[12] Because the issue of liability was settled upon Hines' admission, the only issue remaining for the jury to decide was the amount of damages, if any, Neison should be awarded for pain and suffering as a result of the accident.[13]

Both Dr. Lee and Dr. Lucas testified on Neison's behalf at trial, asserting that Neison's neck and shoulder injuries were a direct result of the accident.[14] The defense presented the testimony of Dr. William Mitchell ("Dr. Mitchell"), an orthopedic surgeon, who conducted a medical examination of Neison approximately two years after the accident.[15] According to Dr. Mitchell, Neison showed evidence of having sustained a neck and shoulder blade sprain, however, these injuries were healed at the time that Dr. Mitchell conducted his examination.[16]

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her accident, and the doctor prescribed pain relievers and directed Neison to apply moist heat to the affected area. *Id.* at 636.

6. *Id.* Dr. Lee is an orthopedic specialist. *Id.*

7. *Neison*, 653 A.2d at 636.

8. *Id.*

9. *Id.* Dr. Lucas treated Neison concurrently with Dr. Lee. *Id.*

10. *Id.* Although it was alleged that Neison's job was changed to a supervisory position, Neison testified at trial that she was not absent from work for any amount of time as a result of her injuries and she did not submit a claim for lost wages. Brief for Appellee at 7, *Neison* (No. 905396).

11. *Neison*, 653 A.2d at 635.

12. *Id.* at 636.

13. *Id.* In order for the jury to find that Neison was entitled to an award for her alleged injuries and pain and suffering, the jury first had to believe that Hines' negligence in causing the accident was a substantial factor in causing Neison's alleged injuries and pain and suffering. Brief for Appellee at 5, *Neison* (No. 905396).

14. *Neison*, 653 A.2d at 636.

15. *Id.*

16. *Id.* Dr. Mitchell stated that injuries of the type diagnosed typically heal in

At the close of the trial, the jury returned a verdict for Hines, thereby failing to award any damages to Neison for pain and suffering.[17] Subsequently, Neison filed post-trial motions requesting that she be granted a new trial, averring that the jury's verdict was contrary to the instructions of the court and/or contrary to the evidence that was presented at trial.[18] The trial court granted Neison's request for a new trial and Hines appealed to the Pennsylvania Superior Court.[19]

On appeal, the superior court held that it is the task of the jury to scrutinize the credibility of witnesses and to weigh and assess the evidence adduced at trial.[20] The court noted that it was within the jury's discretion to believe or disbelieve the evidence put forth at trial and, therefore, the jury could find that Neison did not experience injuries or pain and suffering as a result of the accident.[21] The superior court held that the trial court abused its discretion by substituting its judgment in the place of the jury's, and accordingly reversed the trial court's order granting Neison a new trial.[22]

The Pennsylvania Supreme Court granted allocatur[23] to determine whether the superior court's holding contradicted a previous decision specifically dealing with the issue of whether there are certain types of injuries that human experience teaches are accompanied by pain.[24] Justice Montemuro, writing for a unanimous court, determined that the issue before the court was whether the trial court abused its discretion in granting Neison's motion for a new trial on the basis that the jury's failure to award Neison damages for pain and suffering "shocked its conscience."[25] The court recognized that its standard of review when scrutinizing an order granting a new trial is limited to determining if the trial court abused its

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about three to five months. *Id.*

17. *Id.*

18. *Id.*

19. *Neison*, 653 A.2d at 636.

20. *Id.*

21. *Id.* at 636-37.

22. *Id.* at 636.

23. *Id.* Allocatur is defined as "a word . . . used to denote that a writ or order was allowed." BLACK'S LAW DICTIONARY 75 (6th ed. 1990).

24. *Neison*, 653 A.2d at 636. *See* Boggavarapu v. Ponist, 542 A.2d 516 (Pa. 1988). *See infra* notes 111-15 and accompanying text for a discussion of *Boggavarapu*.

25. *Neison*, 653 A.2d at 635. The court stated that a new trial was awarded because the jury's failure to award damages was so contrary to the evidence presented at trial that it shocked the conscience of the court. *Id.* at 636. The court opined that for the jury to choose not to believe the evidence adduced at trial defies common sense and thus was shocking to the court. *Id.* at 638.

discretion or committed an error of law.[26] Furthermore, the court noted that a trial court should not award a new trial unless the jury's verdict is so contrary to the evidence that it shocks the court's sense of justice.[27]

The court agreed with Hines' contention that a jury is free to assess and weigh the merit of testimony placed into evidence, and from this assessment the jury is free to believe or disbelieve the testimony as it so determines.[28] However, the court also recognized that a jury may not issue a verdict that is conceived through passion, prejudice, partiality or corruption.[29] The court stated that the verdict must reflect some rational relationship to the injuries and damages suffered by the plaintiff as set forth by the uncontested evidence presented at trial.[30] The court stated that in essence, a jury may reject any and all evidence when arriving at its verdict, unless the verdict conflicts with the uncontested evidence presented at trial to such an extent as to defy common sense and logic.[31]

The *Neison* court determined that the evidence presented at trial undoubtedly confirmed that Neison had suffered head, neck and shoulder injuries as a result of the vehicular accident that was caused by Hines.[32] The court noted that the uncontroverted testimony of both Dr. Lee and Dr. Lucas clearly demonstrated the extent of Neison's injuries.[33] The court further stated that in addition to this evidence, Hines' expert witness, Dr. Mitchell, testified at trial that his examination of Neison two years after the accident revealed evidence of a healed neck sprain and a healed scapular or shoulder blade sprain.[34] As a result of the uncontroverted evidence offered at trial concerning Neison's injuries, the court concluded that the trial court did not abuse its discretion in granting Neison a new trial.[35] The court reasoned that the jury's disregard of the uncontroverted evidence concerning Neison's injuries defied common sense and

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26. *Id.* at 636.
27. *Id.*
28. *Id.* at 637.
29. *Id.*
30. *Neison,* 653 A.2d at 637.
31. *Id.*
32. *Id.* at 637-38.
33. *Id.* At trial, Dr. Lee testified that Neison suffered from post-traumatic myofascitis pain syndrome in her neck and scapula, cervical sprain syndrome and a herniated disk. *Id.* at 637. Also, Dr. Lucas testified that his diagnosis of Neison revealed fibromyalgia (inflammation of the muscle tissue) and a cervical strain. *Id.*
34. *Id.* at 637.
35. *Neison,* 653 A.2d at 638.

was therefore shocking to the court's sense of justice.[36]

The court also determined that the decision of the trial court coincided with existing case law pertaining to the issue of compensable pain.[37] The court relied on a general principle of Pennsylvania tort law which states that a person should be compensated for any pain or damage suffered due to the tort of another.[38] The court recognized that pain may be considered subjective and therefore may be compensable if the jury believes that the pain is present.[39] However, when dealing with subjective pain, the court stated that the jury is not bound to believe or find that every injury involves or is associated with pain.[40] Nonetheless, the court held that the injuries sustained by Neison were obvious injuries of the type that one would naturally associate with some degree of pain and suffering.[41] The Pennsylvania Supreme Court agreed with the trial court that the majority of the evidence presented undoubtedly showed that Neison had received neck and shoulder injuries as a result of the accident and that these obvious injuries were not vigorously opposed or controverted at trial.[42] Therefore, because the uncontroverted evidence suggested that Neison suffered from obvious injuries as a result of the accident, the court concluded that the jury was not free to disregard this evidence when it arrived at its verdict.[43]

Accordingly, the Pennsylvania Supreme Court held that the trial court did not abuse its discretion and was warranted in granting Neison a new trial.[44] The court reasoned that the failure of the jury to consider the uncontradicted evidence presented at trial, as well as the evidence of Neison's obvious

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36. *Id.*

37. *Id.*

38. *Id.* (citing Boggavarapu v. Ponist, 542 A.2d 516 (Pa. 1988)).

39. *Id.* (citing *Boggavarapu*).

40. *Neison,* 653 A.2d at 638. The court reasoned that a jury should always consider evidence of subjective pain, however, it is never constrained to believe that the alleged pain is always present. *Id.*

41. *Id.* In *Boggavarapu,* the court determined that obvious injuries that one would naturally associate with some degree of pain and suffering include: "The broken bone, the stretched muscle, twist of the skeletal system, injury to a nerve, organ or other function, and all the consequences of any injury traceable among medical science and common experience as sources of pain and suffering." *Boggavarapu,* 542 A.2d at 518.

42. *Neison,* 653 A.2d at 639. Both Dr. Lee and Dr. Lucas testified as to the neck and shoulder injuries suffered by Neison. *Id.* at 637. Furthermore, Hines' medical expert, Dr. Mitchell, testified that he discovered evidence of a healed neck and shoulder sprain when he examined Neison. *Id.*

43. *Id.* at 637.

44. *Id.* at 640.

injuries, did indeed shock the court's conscience.[45] The court reversed the superior court's order and reinstated the trial court's order granting Neison a new trial.[46]

Pennsylvania courts have addressed the adequacy of jury verdicts for over two hundred years. In *Roberts v. Swift*,[47] the Pennsylvania Supreme Court heard an appeal from a trial court order denying the defendant a new trial in an action of assumpsit.[48] The defendant argued that the jury verdict for the plaintiff in the amount of 720 pounds was excessive and that the jury should have awarded the lesser amount of 450 pounds.[49] The court affirmed the judgment for the plaintiff and reasoned that the jury's verdict was supported by the evidence.[50] The court concluded that "the damages are liberal, but not so outrageous as to justify the interposition of the Court in ordering a new trial."[51]

In 1891, in the case of *Bradwell v. Pittsburgh & W.E.R. Co.*,[52] the Pennsylvania Supreme Court reversed a trial court decision in which the adequacy of the jury verdict was in question.[53] Finding the jury verdict of 6 1/4 cents to be a travesty of justice, the court noted the uncontroverted testimony as to the plaintiff's injuries, the medical charges incurred, and the plaintiff's loss of wages.[54] The court concluded that the plaintiff was entitled to the jury's proper consideration of his damages and ordered a

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45. *Id.*

46. *Id.* The court remanded the case to the Washington County Court of Common Pleas for further proceedings consistent with the court's holding. *Id.*

47. 1 Yeates 209 (Pa. 1793).

48. *Roberts*, 1 Yeates at 209. Assumpsit is defined as "a common law form of action which lies for the recovery of damages for the non-performance of a parol or simple contract, or a contract that is neither of record nor under seal." BLACK'S LAW DICTIONARY 122 (6th ed. 1990).

49. *Roberts*, 1 Yeates at 211. The plaintiff sought compensation for household services provided by her as promised by the defendant. *Id.* at 209. Testimony was given as to the harsh treatment of the woman by the defendant and the number of years she was in the employ of the defendant. *Id.* at 211-12.

50. *Id.* at 212. The court reasoned that the jury may have been properly influenced by the harsh treatment of the woman and the refusal of the defendant to compensate the woman for the household services she provided. *Id.*

51. *Id.*

52. 20 A. 1046 (Pa. 1891).

53. *Bradwell*, 20 A. at 1047.

54. *Id.* The plaintiff was injured when his horse-drawn cart came into contact with a loose rail owned by the defendant streetcar company. *Id.* at 1046. The plaintiff broke his leg in two places and as a result was permanently disabled. *Id.* On the plaintiff's motion for a new trial, the trial court entered an order for the defendant to tender $400 to the plaintiff within one month or upon the defendant's failure to do so, a new trial would be ordered. *Id.* The defendant tendered the money to the plaintiff within thirty days, but the plaintiff refused to accept it. *Id.* The trial court then entered judgement on the verdict and the plaintiff appealed. *Id.*

new trial.[55]

In *Dougherty v. Andrews*,[56] the Pennsylvania Supreme Court held that a trial court judge's decision to set aside a verdict and grant a new trial should not be disturbed if the trial court judge did not commit an abuse of discretion in making the determination.[57] The plaintiff, while acting in his capacity as administrator of an estate, brought an action for trover[58] and conversion[59] against the defendant in an attempt to recover a bank note that was owned by the decedent.[60] At trial, both the plaintiff and the defendant claimed that they were entitled to the note and both presented evidence and testimony in an attempt to support their respective positions.[61] After the jury entered a verdict for the defendant, the trial judge entered an order granting the plaintiff a new trial.[62] The issue presented to the court on appeal was whether the trial judge abused his discretion when he granted the plaintiff a new trial after determining that the jury's verdict was against the weight of the evidence adduced at trial.[63] The court reasoned that the testimony of the plaintiff's witnesses coupled with the fact that the decedent continued to collect interest on the note after the defendant claimed the gift was made to her overwhelmingly supported the plaintiff's case.[64] The court, upon examining the evidence and the judge's instructions to the jury, held that the trial judge had not committed an abuse of discretion and was therefore warranted in entering an order granting a new trial.[65]

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55. *Id.* at 1047.

56. 52 A. 47 (Pa. 1902).

57. *Dougherty*, 52 A. at 51.

58. *Id.* at 47. Trover is defined as a "common-law form of action to recover value of goods or chattels by reason of an alleged unlawful interference with possessory right of another, by assertion or exercise of possession or dominion over the chattels, which is adverse and hostile to rightful possessor." BLACK'S LAW DICTIONARY 1508 (6th ed. 1990).

59. *Dougherty*, 52 A. at 47. Conversion is defined as "any unauthorized act which deprives an owner of his property permanently or for an indefinite time." BLACK'S LAW DICTIONARY 332 (6th ed. 1990).

60. *Dougherty*, 52 A. at 47. The plaintiff claimed that the note was the lawful property of the estate because the decedent had merely left the note with the defendant until he was ready to call for it and the defendant had retained the money since the decedent's death without any authority or right to do so. *Id.* The defendant claimed that the decedent had made a gift of the note to her and therefore the note and the money that it represented was lawfully hers. *Id.* at 50.

61. *Id.* at 49.

62. *Id.* at 51.

63. *Id.*

64. *Id.* at 50.

65. *Dougherty*, 52 A. at 51. The court noted that the plaintiff presented testimony that the decedent had given the note to the defendant until he was ready to

In *Maloy v. Rosenbaum Co.*,[66] the Pennsylvania Supreme Court decided that it is the duty of the trial judge to ensure that a verdict is not allowed to stand if it is against the weight of the evidence or shocking to the judicial conscience of the court.[67] In *Maloy*, the defendant's employee negligently drove a delivery vehicle into the plaintiff, who was a pedestrian.[68] At trial, the defendant argued that the evidence established that the employee was not acting within the scope of his employment at the time of the accident, and the evidence was so clear and uncontroverted as to allow the trial court, rather than the jury, to determine the issue of liability as a matter of law.[69]

The *Maloy* court was faced with the issue of whether the evidence presented at trial was so uncontroverted as to require the trial court to determine the matter at hand, rather than have the jury consider the evidence and arrive at a verdict.[70] The court held that it was proper for the trial court to allow the jury to consider the evidence adduced at trial, because both parties had presented evidence directed at the issue of whether the driver was an employee acting within the scope of his employment at the time of the accident.[71] The court recognized that it is the task of the jury to weigh the evidence and to deduce inferences and conclusions from the available evidence.[72] Consequently, the court determined that every trial judge is faced with the task of ensuring that a jury does not usurp the trial judge's power and issue a verdict that is against the weight of the evidence or that shocks the court's judicial

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call for it and that the decedent continued to collect the interest from the note during his lifetime. *Id.* at 50. The court, however, failed to specifically state the exact reasons the trial judge gave for granting the plaintiff's request for a new trial, merely stating that for reasons assigned the verdict was set aside. *Id.* at 51.

66. 103 A. 882 (Pa. 1918).

67. *Maloy*, 103 A. at 883.

68. *Id.* The plaintiff was walking on a street in Pittsburgh, Pennsylvania when the defendant's delivery vehicle struck and injured him. *Id.*

69. *Id.* At trial, the plaintiff claimed that the defendant was liable for his injuries because the defendant's employee was driving negligently and was acting in the scope of his employment at the time the accident occurred. *Id.* at 882. Conversely, the defendant contended that his employee was "joy riding" and thus was not acting within the scope of his employment when the accident occurred. *Id.* at 883.

70. *Id.* at 883.

71. *Id.* Although the defendant claimed that the employee was not returning to the garage via the most direct route and had picked up a passenger in violation of company policy, the plaintiff testified that the employee had been delivering packages for the defendant earlier in the evening, the car had the defendant's company name painted on the door and the car was being operated in an area where the defendant regularly did business. *Id.*

72. *Maloy*, 103 A. at 883.

conscience.[73] The court further stated that a trial judge may order as many new trials as it takes to ensure that this standard is upheld.[74] After reviewing the record, the *Maloy* court held that the evidence was properly considered by the jury and the trial judge did not commit error by refusing to grant a new trial.[75]

In *Schwartz v. Jaffe*,[76] the Pennsylvania Supreme Court continued to uphold the authority of trial courts to set aside inadequate or excessive jury verdicts.[77] Upon review, the court agreed that a $3000 jury verdict returned in favor of the plaintiff was inadequate in light of the injuries sustained.[78] The court stated that a trial court may set aside a jury verdict if it is patently insufficient.[79] The court held that damages, loss of an eye and the inability to continue in a profession are substantial and concluded that the trial court did not abuse its discretion in granting the plaintiff's motion for a new trial.[80]

In the 1940's, the authority of Pennsylvania trial courts to amend inadequate or excessive jury verdicts continued to be recognized.[81] In the next decade, the state's highest court continued the process of defining that authority. In *Takac v. Bamford*,[82] an appeal was taken after the plaintiff's motion for a new trial, based on inadequacy of the jury verdict, was denied.[83] The Pennsylvania Supreme Court held that based on the record, the verdict of $3000 in favor of the plaintiff was adequate and the court affirmed the trial court's judgment.[84]

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73. *Id.*

74. *Id.*

75. *Id.*

76. 188 A. 295 (Pa. 1936).

77. *Schwartz*, 188 A. at 296.

78. *Id.* The plaintiff, a passenger in a car being driven by the defendant, brought suit after she sustained serious injuries, including the loss of vision in her right eye, following a one-car accident caused by the defendant's negligent driving. *Id.* The plaintiff also received facial injuries which left her permanently disfigured. *Id.*

79. *Id.*

80. *Id.* The plaintiff had to take another job which paid forty percent less because she was no longer able to maintain her job as a bookkeeper due to her vision loss. *Id.* The jury awarded the plaintiff $460 for her medical costs, $500 for loss of wages for five months, and $2040 for the loss of her eye, disfigurement, suffering and future expenses. *Id.* The supreme court noted that an appellate court will not disrupt the decision of a trial court unless a gross abuse of discretion occurs. *Id.*

81. *See* Coleman v. Pittsburgh Coal Co., 43 A.2d 540, 542 (Pa. Super. Ct. 1945) (holding that the power to grant a new trial because of the inadequacy or excessiveness of the damages allowed by a jury is undisputed) (citing Palmer v. Leader Publishing Co., 7 Pa. Super. Ct. 594, 598 (1898)).

82. 88 A.2d 86 (Pa. 1952).

83. *Takac*, 88 A.2d at 87.

84. *Id.* at 89. The plaintiff was injured when a bus on which he was riding

The court reasoned that there were many inconsistencies in the plaintiff's testimony which the jury could have properly considered when awarding damages.[85] The court concluded that the jury was responsible for weighing the evidence and awarding damages as it saw fit.[86] Adducing the amount to be reasonable, the court found no abuse of discretion by the trial court in denying the plaintiff's motion for a new trial.[87]

In *Todd v. Bercini*,[88] the supreme court affirmed a trial court's decision granting the plaintiff's motion for a new trial.[89] Reasoning that a jury may not overlook injuries commonly known to be painful, the court held that no abuse of discretion would be found upon a trial court granting a new trial when justice dictates.[90] The jury returned a verdict for the plaintiff for the precise amount of her medical bills and failed to award her any money for pain and suffering, inconvenience, lost wages or loss of future earning capacity.[91] After the plaintiff was granted a new trial for inadequacy of the verdict, the defendant appealed.[92] The *Todd* court held that a jury may not ignore the existence of pain when a parties' injuries are of the type that common sense and experience indicate that pain and discomfort are present.[93] The *Todd* court concluded that the jury clearly failed to compensate the plaintiff for the whole of her injuries suffered as a result of the defendant's negligence and therefore the grant of a new trial was not an abuse of discretion on the part of the trial court.[94]

In *Elza v. Chovan*,[95] the Pennsylvania Supreme Court was

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experienced brake failure, causing the driver to lose control and crash. *Id.* at 87.

85. *Id.* at 88. The physical nature of the plaintiff's work responsibilities before the accident and his extended 21-month leave from work following the accident were both contradicted. *Id.* The plaintiff's own medical witness testified that his injuries had healed within 90 days. *Id.*

86. *Id.*

87. *Id.* at 89. The court noted: "The grant or refusal of a new trial for inadequacy of the verdict is a matter for the sound discretion of the trial court whose action will not be reversed on appeal except for a clear abuse of discretion . . . ." *Id.*

88. 92 A.2d 538 (Pa. 1952).

89. *Todd*, 92 A.2d at 539.

90. *Id.* The plaintiff, a passenger in the defendant's car, was hospitalized three times for her injuries, underwent surgery twice, and sustained permanent disabilities as a result of the defendant's automobile hitting a steel utility pole. *Id.* at 538. The jury returned a verdict of $2070.43 for the plaintiff, representing the sum of her medical expenses alone. *Id.*

91. *Id.* at 538.

92. *Id.*

93. *Id.* at 539.

94. *Todd*, 92 A.2d at 539.

95. 152 A.2d 238 (Pa. 1959).

asked to decide if a trial court abused its discretion by granting a new trial on the basis of an inadequate jury verdict.[96] The court held that the verdict was not inadequate and that the trial court had committed a gross abuse of discretion.[97] Pointing to several inconsistencies in the testimony of the plaintiff, the supreme court concluded that the jury simply did not believe him and awarded an amount less than his alleged medical expenses as a compromise verdict.[98] The court cautioned that in order to sustain a grant of a new trial, trial courts must demonstrate in a written opinion the urgency of the injustice of the jury verdict.[99]

In 1961, the Pennsylvania Supreme Court decided the case of *Thompson v. Iannuzzi*.[100] The *Thompson* court held that a new trial was required because the plaintiff introduced evidence that she experienced severe injuries and numerous medical bills, but the jury failed to grant her any damages for pain and suffering.[101] The plaintiff was injured when the defendant collided with the rear end of a vehicle in which the plaintiff was riding as a passenger.[102] The plaintiff suffered severe neck and back injuries as a result of the accident.[103] In addition, the plaintiff experienced persistent headaches after the accident and was required to have her coccyx removed due to a severe fracture.[104] At trial, the jury determined that the defendant was negligent in the operation of his automobile and therefore awarded the plaintiff's husband money to pay for his wife's medical bills.[105] However, the jury failed to award the plaintiff any damages for the pain and suffering associated with her

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96. *Elza*, 152 A.2d at 239.

97. *Id.* at 241. As the majority reasoned, "[t]here should be nothing difficult about a decision to grant a new trial for inadequacy: the injustice of the verdict should stand forth like a beacon." *Id.* In granting the new trial, the trial court judge had described the decision as difficult and akin to tossing a coin. *Id.* at 239.

98. *Id.* at 241. The plaintiff, a passenger on a motorcycle, sustained injuries upon being thrown from the motorcycle when it collided with a car operated by the defendant. *Id.* at 241-42. The plaintiff was hospitalized for a week and did not return to work for approximately three months. *Id.* at 242.

99. *Id.* at 241.

100. 169 A.2d 777 (Pa. 1961).

101. *Thompson*, 169 A.2d at 779.

102. *Id.* at 777.

103. *Id.* at 778. The plaintiff received her injuries when she was thrown to the floor and against a metal portion of the driver's seat. *Id.* at 777.

104. *Id.* at 778. The coccyx is a small bone, consisting of usually four vertebrae which forms the lower extremity of the vertebral or spinal column. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 352 (27th ed. 1988).

105. *Thompson*, 169 A.2d at 778. The jury granted an award of $758.00 for the medical expenses incurred by the plaintiff. *Id.*

injuries.[106] The issue facing the court was whether a new trial was proper because the evidence concerning the plaintiff's injuries and pain was entirely inconsistent with the jury's verdict, which failed to award any damages for pain and suffering.[107] The court reasoned that it is unconscionable for a jury to award money to a husband to pay his wife's medical bills, but not to award any damages for pain and suffering to the wife for the same injuries.[108] The *Thompson* court determined that the plaintiff would have been subjected to some pain and suffering considering the severity and type of injuries that she sustained.[109] In concluding that a new trial was proper, the court opined that the jury clearly disregarded the evidence concerning the plaintiff's injuries and pain and suffering and thereby entered a verdict that was inconsistent with the evidence.[110]

In *Boggavarapu v. Ponist*,[111] the Pennsylvania Supreme Court again demonstrated its commitment to provide deferential guidance to trial courts. Reversing a new trial order, the court held that there are certain injuries for which a jury may not disregard pain and suffering damages.[112] The court reasoned that a jury may find a dog bite or a tetanus shot to be a mere inconvenience of life and the jury was free to award only minimal damages.[113] Stating that a jury is not compelled to

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106. *Id.* The plaintiff testified that she suffered severe headaches and pain in her neck, spine and back areas after the accident. *Id.* Furthermore, the plaintiff's doctor testified that her injuries were a direct result of the accident. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* Both the plaintiff and her doctor offered testimony on the severity and seriousness of her injuries. *Id.* Furthermore, the court stated that it was a matter of common sense that injuries of this type are associated with some pain and suffering. *Id.*

110. *Thompson*, 169 A.2d at 779. The court stated that the pain and suffering associated with this type of injury was so obvious that it defies common sense to disallow damages for pain and suffering. *Id.* at 778-79.

111. 542 A.2d 516 (Pa. 1988).

112. *Boggavarapu*, 542 A.2d at 518. In *Boggavarapu*, the plaintiff was bitten by the defendant's dog. *Id.* at 517. The plaintiff sustained two puncture wounds and was taken to a hospital emergency room where he received a bandage and two tetanus shots. *Id.* Alleging that the shots injured his sciatic nerve, the plaintiff brought suit against the defendant for various damages and the defendant joined the hospital and the attending physician in the suit. *Id.* The plaintiff sought $9,000 in medical costs and pain and suffering damages. *Id.* Finding neither the hospital nor the physician liable, the jury returned a verdict of only $42.60 for the plaintiff, the amount of his emergency room treatment alone. *Id.* at 518.

113. *Id.* at 518. The allegation that the needle pierced the plaintiff's sciatic nerve was strenuously argued at the trial. *Id.* Medical testimony was given to the fact that such an injury was not possible from a tetanus shot puncture. *Id.* After the piercing injury was disproved, the jury was left with the question of subjective

award pain damages when no identifiable injury has been proven, the court reversed and reinstated the jury verdict.[114] The principles set forth in *Boggavarapu* have been frequently applied by Pennsylvania appellate courts.[115]

In *Kiser v. Schulte,*[116] the Pennsylvania Supreme Court again demonstrated the authority of appellate courts to review and reverse inadequate jury verdicts.[117] The court held that a jury award of $25,000 was clearly inadequate and "shocking" in light of the uncontroverted evidence as to damages and remanded the case for a new trial on damages only.[118] Reasoning that the only testimony presented on the issue of damages was uncontroverted, the court found the amount awarded to be unsupported by the evidence presented.[119] Finding that the trial court abused its discretion by not granting a new trial, the court affirmed the order of the superior court vacating the jury award and remanded for a new trial on the issue of damages.[120]

The *Neison* court appears to have adopted a common sense

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pain. *Id.* at 518-19.

114. *Id.* at 519. The court stated: "We do not mean to imply that there are magic, invocatory words that of themselves will justify a new trial." *Id.* However, the court held that the trial judge's statement that he would have denied a new trial if pain and suffering damages were awarded "no matter how small," was not sufficient proof that an injustice had occurred by the award of no pain and suffering damages. *Id.* Finding no injustice in the verdict and not convinced by the trial court's rationale, the court held that the order for a new trial could not stand. *Id.*

115. *See* Nudelman v. Gilbride, 647 A.2d 233 (Pa. Super. Ct. 1994) (affirming the denial of a new trial motion after the jury returned a substantial verdict); Lupkin v. Sternick, 636 A.2d 661 (Pa. Super. Ct. 1994) (affirming a new trial order after no damages were awarded to the plaintiff for "soft tissue injuries" she received in a rear-end accident in which the defendant conceded liability and his medical witness corroborated the plaintiff's injuries); Hawley v. Donahoo, 611 A.2d 311 (Pa. Super. Ct. 1992) (holding that a fracture of a vertebra is an objective injury to which pain and suffering damages must attach).

116. 648 A.2d 1 (Pa. 1994).

117. *Kiser,* 648 A.2d at 4. The plaintiffs' daughter, age 18, was killed when a car in which she was riding crashed shortly after she, the defendant driver, and his girlfriend left a wedding reception where all three had been drinking heavily. *Id.* at 3. The parents of the decedent brought separate wrongful death and survival actions against both the defendant and the hosts of the reception. *Id.*

118. *Id.* at 4. The jury found the defendant 60% liable and the hosts of the reception 40% liable. *Id.* at 3. The jury also found the decedent negligent, but it did not find the decedent's negligence to be a substantial factor in causing her death. *Id.*

119. *Id.* at 4. The sole witness on the issue of damages testified that the loss of the plaintiff to her family was between $11,862.50 and $18,980.00. *Id.* at 5. The loss to the decedent's estate in the survival action was estimated between $232,400.00 and $756,081.43. *Id.* In addition, funeral expenses totaled $8,411.00. *Id.* at 5 n.2.

120. *Id.* at 8.

approach when it determined that the trial judge did not abuse his discretion in granting Neison a new trial. The court concluded that the evidence adduced at trial was of the type that would normally lead a reasonable person to believe that some degree of pain and suffering was present from the types of injuries that Neison experienced.[121] The court, largely relying on its holding in *Boggavarapu*, determined that Neison's injuries were objective in nature and thus ordinarily would be associated with some degree of pain and suffering.[122] The court also recognized that the existence of Neison's injuries was not vigorously contested by the defendant's medical expert, who admitted that Neison had suffered from a neck and shoulder blade sprain.[123] Furthermore, the type of injuries suffered by Neison and the violent manner in which they were incurred differed markedly from the subjective types of injuries such as those caused by a dog bite or the piercing of a needle as in *Boggavarapu*.[124]

The *Neison* decision suggests that when liability is not an issue in a personal injury case and there is uncontradicted evidence concerning a plaintiff's injuries, a jury should consider whether the injuries are of the type that common sense suggests involve pain and discomfort. If common sense suggests that the injury is of the type that would cause pain, then the plaintiff is entitled to an award for pain and suffering. However, this rationale is only proper when the evidence and medical testimony concerning the plaintiff's injuries is uncontradicted, because it is possible to vigorously contest whether an injury actually exists, thus reducing the injury from an objective type injury to a subjective type injury. According to the court's rationale in *Neison*, a trial court will not be faulted for granting

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121. *Neison*, 653 A.2d at 638.

122. *Id.* at 638-39. Neison's herniated disk and neck and shoulder blade sprain are injuries of the type that conform with the court's definition of an "objective injury" as set forth in *Boggavarapu*. *See supra* notes 111-15 and accompanying text for a discussion of *Boggavarapu*.

123. *Neison*, 653 A.2d at 639. Had the defendant vehemently contested the existence of Neison's injuries or introduced substantial evidence that the injuries were caused by some occurrence other than the accident in question, the court may have been inclined to accept the jury's failure to award damages for pain and suffering. *Id.* However, the court did recognize that the defendant's doctor disputed the degree and extent of Neison's shoulder and neck injuries. *Id.*

124. *Id.* at 638. Common sense dictates that a herniated disk, a sprained neck and a sprained shoulder received as a result of a violent car accident are of a more serious and substantial nature than the small puncture wounds that are normally caused by a dog bite or the piercing of a needle. These former injuries are of the type that common sense suggests causes some degree of pain and discomfort. *Id.* at 640.

a new trial based upon a jury's failure to award damages for pain and suffering when the injuries complained of are shown to be caused by the tort of another, are objective in nature and their existence is uncontradicted.

The court was correct in holding that there are certain types of injuries that commonly and naturally involve some degree of pain and suffering. It is irrational to assume that a person who is involved in a violent automobile accident will not experience some amount of pain and suffering from injuries. Although Neison was not forced to miss any work following her accident,[125] it is still logical to assume that Neison endured some degree of pain and discomfort from her injuries which she was not subjected to before the accident. Although the supreme court has left open to the jury the option to issue a smaller award to a plaintiff when the jury believes that the plaintiff's injuries have not caused significant detriment to the plaintiff, the court has also dictated that it will not allow a jury to issue a verdict that completely eliminates damages for pain and suffering when there are objective-type injuries involved.

The Neison court has preserved the general theory of tort law that victims of torts of others must be compensated for their losses. Furthermore, when a plaintiff proves that they have suffered from objective-type injuries, the court will not allow a jury to withhold compensation from the plaintiff for the pain and suffering that is commonly associated with the plaintiff's injuries. Given the *Neison* court's holding, a trial court judge may properly grant a new trial when it appears that a jury has failed to award damages for pain and suffering when a plaintiff has suffered objective-type injuries that are naturally associated with some degree of pain.

The *Neison* holding appears to provide a mutually beneficial rule for plaintiffs and defendants alike. It serves to compensate plaintiffs in some amount, as determined by the triers of fact, for the torts caused by defendants, but exonerates defendants from this duty if the jury does not reasonably believe that either the injury or the pain exists. While preserving the traditional province of the jury, the Pennsylvania Supreme Court has demonstrated its continuing authority and responsibility to insure the proper application of the law.

Scott P. Bittner
Joyce A. Hatfield-Wise

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125. Brief for Appellee at 7, *Neison* (No. 90-5396). As a result of her continued employment after the accident, Neison did not present a claim for lost wages. *Id.*